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NO. 84243-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FEDERAL WAY SCHOOL DISTRICT

Respondent,

vs.

DAVID VINSON,

Petitioner.

APPEAL FROM KING COUNTY SUPERIOR COURT NO. 08-2-05374-1 KNT
COURT OF APPEALS NO. 61752-4-I (DIVISION I)

SUPPLEMENTAL BRIEF RE: *CITY OF SEATTLE V. HOLIFIELD*

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TABLE OF AUTHORITIES

This Supplemental Brief discusses this Court's decision in City of Seattle v. Holifield, 240 P.3d 1162, 1168-69 (Wash. 2010) and its impact on the court of appeals decision in this case, Federal Way School Dist. 210 v. Vinson, 154 Wn. App. 220, 225 P.3d 379 (2010).

The appeals court in Vinson permitted the school district to file an appeal when it had no statutory right to do so, and then compounded the error by applying the improper standard to ascertain whether a writ of review was available to the district pursuant to RCW 7.16.040. Vinson, 154 Wn. App. 220. The statutory writ of certiorari or review is an extraordinary remedy. State ex rel. Gebenini v. Wright, 43 Wn.2d 829, 830, 264 P.2d 1091 (1953). The grounds upon which such a writ may be granted are delineated in RCW 7.16.040. All statutory prerequisites must be present before a writ of certiorari may be granted. Bridle Trails Comm'ty Club v. Bellevue, 45 Wn. App. 248, 252, 724 P.2d 1110 (1986).

A writ of certiorari is an extraordinary remedy reserved for extraordinary situations. See Oliver v. American Motors Corp., 70 Wn.2d 875, 425 P.2d 647 (1967).

To obtain a writ of review, the petitioner must show (1) that an inferior tribunal (2) exercising judicial functions (3) exceeded its jurisdiction or acted illegally, and (4) there is no adequate remedy at law. Washington Public Employees Ass'n v. Washington Personnel Resources

Bd. 91 Wn. App. 640, 646, 959 P.2d 143, 146 (1998).

This court in City of Seattle v. Holifield, 240 P.3d 1162, 1168–69 (2010) recently examined the language "acted illegally" from the above test and the court stated:

> We hold that, for purposes of RCW 7.16.040, an inferior tribunal, board or officer, exercising judicial functions, acts illegally when that tribunal, board, or officer (1) has committed an obvious error that would render further proceedings useless; (2) has committed probable error and the decision substantially alters the status quo or substantially limits the freedom of a party to act; or (3) has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of revisory jurisdiction by an appellate court.

Id. Obviously Holifield was decided after Vinson so the court of appeals could not have applied this standard. Instead, the court of appeals applied the "error of law" standard. The Vinson court held:

> Therefore, the hearing officer's decision contained an *error of law* on sufficient cause. The trial court abused its discretion by denying the writ.... Because the *error of law* is dispositive of the appeal, there is no need to remand. We reverse the trial court's denial of the writ and vacate the order affirming the hearing officer and awarding attorney fees. We remand with direction to the superior court to enter an order reversing the decision of the hearing officer.

Vinson, 154 Wn. App. at 231. Besides being rather indecisive as to whether it was necessary to remand the matter, the court clearly applied the "error of law" standard to find reversal for any error of law, rather than applying the more extraordinary standard set forth in Holifield. This Court in Holifield decided that the error of law standard was insufficient. This Court

specifically stated that,"[N]or are [standards for granting the statutory writ of review] so lax that the writ applies only to correct mere *errors of law*." Holifield, 240 P.3d at 1169.

Thus, the court of appeals applied the wrong standard. As previously noted, "[A] writ of certiorari is an extraordinary remedy reserved for extraordinary situations. See Oliver, 70 Wn.2d 875. Yet, there was nothing extraordinary about the circumstance in this case. A superb teacher prevailed at a hearing to determine whether there was sufficient cause for his discharge. The superior court denied the school district's writ of review. The court of appeals disagreed with both the hearing officer and the superior court and ruled that the hearing officer made an error of law. This, the court of appeals concluded, allowed it to substitute its view of the case for that of the hearing officer. RCW 28A.405.340 provides the standard of review for the superior court when a teacher appeals under that statute. One basis for appeal is the "affected by error of law" standard. This standard appears to be the same as that applied by the Vinson court. In other words, rather than being an extraordinary remedy provided only in exceptional circumstances, the standard of review now available to school districts by writ under Vinson is identical to that actually statutorily afforded to school teachers. But this interpretation of the governing statute is, at best, strained. As the dissent in Vinson persuasively explains:

> As the majority opinion readily admits, the legislature has specifically allowed a teacher to seek judicial review of a hearing officer's decision in a dispute of this type while simultaneously declining to authorize a school district to do so. RCW 28A.405.320. Unquestionably, the legislature's will was that school districts not have the right to seek review in superior court in cases of this type.

Vinson 154 Wn. App. at 235. The dissent goes on to assert that:

> Simply put, the Kelso court did not confront the true issue presented: was granting a right to judicial review to the school district, in the face of a plain, clear legislative determination to the contrary, an improper affront to the powers and prerogatives of the legislature?

Id. at 236.

The dissent's argument is bolstered by the teacher discharge statutes pertaining to appeal. RCW 28A.405.320 limits the right of appeal to superior court to employees. However, once the matter has been heard in superior court, the statute provides either party with a right of to appellate review. RCW 28A.405.360. Thus, RCW 28A.405 clearly sets forth a scheme in which only the employee has the right of appeal to superior court, but either party may seek appellate review of a superior court decision. In Kelso v. Howell, 27 Wn. App. 698 (1980), the court speculated that this scheme was the result of some kind of legislative scrivener's error.[1]

[1] The court stated in footnote 2 that, "Review of the history of the statutory scheme dealing with school district actions affecting contractual rights of school teachers raises the question of whether the denial of statutory judicial review to the school board as one of the interested parties was intentional or a result of legislative oversight." Kelso, 27 Wn. App. at 700.

Thus, apparently a new rule of statutory construction and interpretation of legislative intent exists, whereby a court can speculate that the legislature forgot to change a statute when it amended others. After so speculating, the court is apparently free to simply ignore the unambiguous statutory construction actually created by the legislature and instead impose a new regime.

The teacher discharge statutes are not ambiguous or even complicated. A school district decides whether it has probable cause to discharge. RCW 28A.405.300. If the employee timely objects and asks for a hearing, then a hearing officer is appointed. RCW 28A.405.300 and.310. The hearing officer decides whether "sufficient cause" for discharge exists. Id. Only an employee may appeal the hearing officer's ruling to the superior court. RCW 28A.405.320. Once the superior court has decided the case, then either party may file a further appeal. RCW 28A.405.360.

The Vinson court has traveled miles away from the plain language of any of these statutes. Instead, by judicial fiat, the court has created a system of teacher discharge cases that (1) eliminates the "sufficient" part of the cause, (2) eliminates a teacher's ability to obtain attorneys fees if she prevails, and (3) judicially creates not only a right to appeal, but a favorable standard of review for school districts on appeal. The statutes do not stand for these propositions.

DATED this the 17th day of January, 2011 at Auburn, Washington

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I am employed by the law offices of Van Siclen, Stocks & Firkins.

2. On January 26, 2011, I caused to be served a true and correct copy of the Supplemental Brief re: City of Seattle v. Holifield on the following via ABC Legal Messenger:

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DATED this 25th day of January, 2011, at Auburn, Washington.

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